

September 11th 2010 Governance Meeting for WiredWest Town Delegates

Municipal Lighting Plant & Municipal Lighting Plant Public Cooperative Governance Structure Presentation

Legislation Actions Description & FAQ

*Revised and Updated
October 7, 2010*

Recommended Governance Structure

The governance structure for WiredWest will take its form from existing Massachusetts law. The Municipal Lighting Plants of each member town will create a Municipal Lighting Plant Public Cooperative that will run the Fiber Optic Network.

➔ Each Town will form a Municipal Lighting Plant

Member towns will then form and join the . . .

➔ Municipal Lighting Plant Public Cooperative

➔ The Cooperative will be called WiredWest

On September 11th, 2010 Town Delegates voted to adopt this governance structure.

Legislation Actions Description

The Enabling M.G.L. Statutes are contained in Chapter 164.

The relevant sections are § 35, § 47C, § 47E. To see the complete statutes, link to:

<http://www.malegislature.gov/Laws/GeneralLaws/PartI/TitleXXII/Chapter164>

- Each town shall form a Municipal Lighting Plant for the operation of telecommunications systems (§ 34,47E)
- A Municipal Lighting Plant Public Cooperative will be formed for furnishing telecommunications service to the towns in the WiredWest region (§ 47C) and each of the above towns will become a member of the Cooperative, if it so elects.
- The Municipal Lighting Plant Public Cooperative will do business under the trade name **WiredWest**.

What a Town Municipal Lighting Plant is Empowered to Do

Each municipality in Massachusetts is authorized under M.G.L. c. 164 § 34 to create a municipal lighting plant.

Municipal lighting plants have the authority to construct, purchase or lease and maintain:

- One or more plants for the manufacture or distribution of gas or electricity or for the operation of a community antenna television system. (M.G.L. c. 164 § 34)
- Such facilities as may be necessary for the distribution or the operation of a telecommunications system. (M.G.L. c. 164 § 47E)

The Process of Voting to Establish a Municipal Lighting Plant (MLP)

To establish a Municipal Lighting Plant, a municipality must vote to “acquire” a plant in accordance with M.G.L. c. 164 § 36, which requires the following:

- A municipality must hold two town meetings (special or annual) not less than two (2) months nor more than thirteen (13) months apart.
- At each meeting, a vote shall be taken “*by ballot with the use of the voting list.*”
- WiredWest strongly recommend the following procedures:
 - ✓ the vote should be a paper ballot vote - taken during the town meeting - with ballots being given only to registered voters as identified on the voting list who place their filled out ballots in the voting box.
 - ✓ the procedure is not an election type procedure – but simply what is known as a *secret ballot vote* during a duly noticed and called town meeting (special or annual); that is, the article is read and a vote is taken by paper ballot (instead of voice votes) and those voters submitting ballots are checked off on the voters list.

✓ However, the towns may use any procedure they like so long as:

- The vote happens during a town meeting
 - The vote is taken by paper ballot; and
 - the only persons allowed to vote are residents registered to vote and are checked off on a voting list.
- Passage requires a two-thirds vote in favor of the article at the two town meetings.
 - After the votes have taken place, the town clerk shall submit to the Department of Public Utilities a certified copy of the records of the town as relates to the vote. (M.G.L. c. 164 § 37).
 - There does not appear to be any filing fee associated with certifying the town meeting votes to the Department of Public Utilities. (§ 37: after a city or town has voted under section thirty-five or thirty-six, the city or town clerk shall forthwith transmit to the department a certified copy of so much of the records of the city council or of the town as relates to the result of the vote.)
 - If either vote fails, the municipality is precluded from voting on the article for a period of two years.

Oversight of Municipal Lighting Plants [§ 55, § 56]

- At the discretion of the Select Board, a town that has established or votes to establish an electric plant may elect a Municipal Light Board consisting of either three or five citizens of the town, each for a term of three years. If formed, this Board will function in a reporting role to the Select Board and supervisory role over the MLP Manager (see below).
- If a Light Board is elected, of the three-member board, initially one shall be chosen for one year, one for two years, and one for three years, and at each annual meeting thereafter one for a term of three years.

- Of the five-member board, initially one shall be chosen for one year, two for two years and two for three years and thereafter, the terms shall be for three years.
- The Municipal Light Board shall have authority to construct, purchase or lease a gas or electric plant in accordance with the vote of the town and to maintain and operate the same.
- At its discretion, Select Board may choose not to form a Municipal Light Board and, instead, assume the responsibilities of the Board itself to provide oversight for the MLP and MLP Manager.

Appointment of a Manager for the MLP

- The Select Board (or Municipal Light Board, if any) of a town acquiring an electric plant shall appoint a manager of municipal lighting who shall, under the direction and control of the selectmen (or municipal light board, if any) and subject to this chapter, have full charge of the operation and management
- The MLP shall have authority to construct, purchase or lease an electric plant in accordance with the vote of the town and to maintain and operate the same.
- The manager's compensation and term of office shall be fixed in cities by the selectmen (or municipal light board).

WiredWest Governance Committee Recommendation on Town Management of an MLP

Given that under the Public Cooperative structure, the town's responsibilities will be minimal, WiredWest's Governance Committee recommends the town considers the following approach to providing oversight and management for the MLP:

- The town votes to create a MLP as previously specified.
- The town does not form a MLP Board. Instead, the Select Board appoints the MLP Manager.
- The Select Board votes to join the public cooperative.

- Under the guidance of the Select Board, the Manager is appointed representative to the Public Cooperative.
- The Manager is responsible for all accounting and reporting required.

Note: The statutes are not entirely clear on some of the details surrounding town oversight of the MLP, therefore this recommendation is still under review and is subject to change. (It would not be necessary to review this recommendation before June 2011.)

Municipal Lighting Plants are Allowed by Statute to form a Public Cooperative

Any municipal lighting plant shall be allowed join with other public lighting plants to form cooperative public corporations for the purpose of:

- Furnishing electric power and energy related services (M.G.L. c. 164 § 47C);
- Cable television services (M.G.L. c. 164 § 47C); or
- Operating a telecommunications system (M.G.L. c. 164 § 47E).
- WiredWest will provide the legal and administrative service needed to form the Public Cooperative.

Forming the Public Cooperative

To form a Municipal Lighting Plant Public Cooperative, at least two duly authorized municipal lighting plants must draft and file Articles of Organization with the Secretary of the Commonwealth.

- The founding MLP members of the cooperative will have the opportunity to draft the public cooperative's bylaws that will govern organizational and operational matters.
- The bylaws will contain new membership criteria and a mechanism for allowing new municipal lighting plants to join, as well as a mechanism for municipal lighting plants that wish to leave the cooperative.

- WiredWest will provide the legal and administrative service needed to form the Public Cooperative.

Governing the Public Cooperative

The Public Cooperative (WiredWest) is to be run by a Board of Directors that is appointed by the member Municipal Lighting Plants (i.e., towns that voted to form a Municipal Lighting Plant)

- The Board of Directors will manage the affairs of the public cooperative. This will be done through the election of officers to an Executive Committee and hiring of a manager.
- The bylaws of the Public Cooperative must include rules by which the Board Members (town representatives) are appointed to the WiredWest Cooperative. (e.g., one-town/one-vote; by population; some other method).

Transitioning the Governance of WiredWest from the current Steering Committee and Town Delegates to the Public Cooperative's Board of Directors and Executive Committee.

- Towns that have formed a MLP will appoint representatives to the Public Cooperative Board of Directors in accordance with the method prescribed in the bylaws.
- The Cooperative's Board of Directors will elect an Executive Committee in accordance with the method prescribed in the bylaws. The number of members comprising the Executive Committee will be articulated in the bylaws.
- When the Cooperative's Board of Directors and Executive Committee are installed, the current Steering Committee and town delegates will cease to function on behalf of WiredWest.

How WiredWest Plans to Assist the Towns

WiredWest will provide informational outreach, legal counsel and administrative guidance to the towns every step along the way through its delegates, steering committee, consultants and legal counsel.

- WiredWest will meet with town Select Boards to brief members, answer questions and coordinate with town counsel as Select Boards require.
 - WiredWest will provide briefing materials for Town Counsel and meet with counsel as desired.
 - WiredWest will draft the warrant article to create a Municipal Light Plant.
 - WiredWest will provide informational materials and strategies for communicating WiredWest's mission and goals and assistance for getting out the vote.
 - WiredWest will plan, organize, manage and attend pre-vote information sessions to get out the vote.
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FAQ Municipal Lighting Plants & Municipal Lighting Plant Public Cooperative

Q1 How does a town become a member of the Municipal Public Lighting Plant Public Cooperative (WiredWest)?

Becoming a member of the Municipal Lighting Plant Public Cooperative is a two-step process:

2. The town must first vote to create a “Municipal Lighting Plant” in accordance with M.G.L. statutes.
3. Once the town has voted in the affirmative to become a Municipal Lighting Plant, the town may join the Public Cooperative.

The Cooperative will do business under the trade name WiredWest.

Q2 What are the actual mechanics of the process the towns must go through? Can a town choose to have their vote at 2 Special Town meetings?

- Nothing in the statutes prevents a town from scheduling 2 Special Town Meetings for the purpose of voting on the Article. It is up to the town to decide.
- To become a Municipal Lighting Plant, the town must put an Article specifying the action to vote at two Town Meetings held not than less than 2 months apart, or more than 13 months apart.
- The Article must pass by 2/3 vote each time.
- At the discretion of the Select Board, either the Select Board itself may decide, or the Select Board may form a Municipal Lighting Plant Board comprised of 3 or 5 citizens.
- The Select Board (or Lighting Plant Board, if any) is the appropriate body to vote to join the Public Cooperative.

Q3 Is any kind of enabling legislation required to proceed with this governance structure?

- No. The fact that the entire process can be accomplished without the need to involve the legislature is one advantage of this structure.

Q4 What role will WiredWest play to assist the town through the process of becoming a member of the Municipal Lighting Plant Public Cooperative?

- WiredWest is researching the complete process and creating a comprehensive application package for the towns.
- WiredWest will meet with the Select Board and hold informational meetings to thoroughly explain the process and answer all questions.
- WiredWest will advise the town on every step of the process, from preparing for the town votes through operating the network

Q5 What happens if a Town Meeting does not pass the Municipal Lighting Plant Article?

- The Town must wait 2 years before it can consider the matter again.
- This provision makes it imperative that town broadband advocates organize and canvas very thoroughly.
- If broadband advocates are not confident that their town is ready to vote yes, it may be prudent to wait for other towns to hold their vote first.
- There will be a mechanism in the bylaws for towns to join the Public Cooperative after it has been established.

Q6 When it comes to the Article on the Town Warrant, is it important that all towns vote on the same language?

- No. Counsel advises us that the Article may have slightly different language from town to town.
- However, for any given town, the language *must be identical on the article for both votes*.

Q7 By employing the Municipal Lighting Plant Public Cooperative statute, can WiredWest engage in telecommunications if the lighting

plants do not first provide electricity or community antenna television service?

Section 34 states: A town may, in accordance with this chapter, construct, purchase or lease, and maintain within its limits, one or more plants for the manufacture or distribution of gas or electricity or for the operation of a community antenna television system for municipal use or for the use of its inhabitants.

- Yes. Our research indicates that providing electricity and/or community antenna television service is not a prerequisite to providing telecommunications service.
- However, the language in the statutes is not explicit. WiredWest is continuing to research this question by seeking additional expert opinion; further clarification on this question is expected soon.
- Even if the answer was “no”, there are very clear ways for WiredWest to engage in “electricity related services” that would bring added value to the project at the same time it met a possible requirement of the statutes.
- These services are associated with energy metering and other energy conservation activities (including SmartGrid) that would be enabled via the fiber infrastructure.
- Making these services part of the project - whether or not they were required statutorily - is worthy of serious study for several reasons: 1.) energy conservation is a public good and having it an integral part of the project may help engender support; and, 2.) an energy conservation component may open the door to additional sources of financing.

Q8 Does the use of the word “*plant*” in the statute mean an actual structure?

Section 34 further states: Such plants may include suitable land, structures and machinery and other apparatus and appliances for operating a community antenna television system or for manufacturing, using and distributing gas or electricity for said purposes. A town, engaged in the business of operating a community antenna television system, or of distributing gas or electricity, may, as a part of such business if an appropriation is made therefor, rent, lease, or sell for cash or credit at prevailing retail prices, install and service, within the territory served by such business . . .

- Q7 looks at § 34 from the point of view of whether one service (electricity and/or CATV) needs to *precede* another service (telecommunications).] Q8 explores the legality of employing § 34 for telecommunications services alone from the point of view of whether or not it requires *tangible property* to do so.
- Our research indicates that a “plant” does not necessarily mean *physical items*, and that a plant can be construed as a town “department.”
- However, this point is not self evident. It must be acknowledged that a “plant” may indeed mean a tangible item is required for providing CATV or for manufacturing and distributing gas or electricity.
- Referring to § 34, keep in mind that “*a town may, in accordance with this chapter, construct, purchase or **LEASE**, and maintain within its limits, one or more plants for the manufacture or distribution of gas or electricity or for the operation of a community antenna television system.*”
- Thus, if a “tangible item” is required to stay within the allowable meaning of § 34, the Public Cooperative has two avenues to explore to achieve compliance:
 1. It could lease to the towns a strand of fiber for the operation of a community television system. The strand of fiber will be the “tangible item” (or plant) that will be **LEASED** by the municipality. (This can also be an incentive for municipalities that will now have the opportunity to televise public meetings and make government more transparent.)
 2. In providing “energy conservation services” to the towns delivered via fiber (see Q7), the Public Cooperative could, in the same manner, LEASE the metering technology (and other energy-related conservation hardware) back to the town. The energy conservation hardware will be the “tangible item” LEASED by the municipality.

Q9 Does the Warrant Article address the issues raised in Q7 and Q8?

- Yes, to the extent that the article leaves open the options to offer additional services that might be determined to be advantageous or necessary.

Q10 Once created, who will be in charge of the town’s Municipal Lighting Plant? Is it the Select Board, an appointed committee, or other?

- Each town can decide what works best for them. Some will appoint a Municipal Lighting Plant Board of Advisors. Some will keep it under the control and oversight of the Select Board.
- The Town Municipal Lighting Plant does not, in fact, do anything other than file annually with the State. It does not provide electric service. It does not provide telecommunications service.
- The Public Cooperative (WiredWest) will do all the work related to the actual running of the network under the guidance of a Board of Directors made up of the delegates appointed by the towns.
- Under M.G.L. it appears the town may need a manager to run the operation. We believe this provision can be satisfied by “appointing” a manager.

Q11 Will the towns have the right to vote on project financing once the organizational structure is selected? Will these decision be made at town select boards, at town meetings or the Cooperative level?

Providing a full answer will require development of bylaws, but the principals are simple:

- Decisions that require the expenditure of town funds will need to be approved at the town level - likely by annual Town Meeting.
- Decisions that do not require commitment of town funds will be made by the Public Cooperative Executive Committee and Board of Directors (all of whom are town appointed representatives)

Q12 What will it cost the town to join the WiredWest cooperative? And how much per year after joining? Will there be operating costs?

- Assuming the town creates the Municipal Lighting Plant solely for the purpose of joining the Public Cooperative, the cost will be minimal because the Public Cooperative will be managing the network.
- Our research indicates that there are no filing fees owed to the Commonwealth for the town to authorize a Municipal Lighting Plant.
- There may some staff time of existing town employees to coordinate and post meetings and possibly some light bookkeeping.
- Additional Start Up Costs: There will be a fee to towns for joining the WiredWest cooperative. The exact amount has not been determined but is expected to be in the \$1,000-\$1,500 range

- Whether or not there will be annual membership fees has yet to be determined.
- The WiredWest bylaws sub-committee is addressing the issue of fees for joining the cooperative and for annual renewals. Their recommendations will be presented to town delegates on October 30, 2010.

Q13 What happens if a town already has an existing lighting plant? Can it expand its focus to include the WiredWest cooperative network?

- Yes. A municipal lighting plant is always set up as a semi-autonomous department of town government. The Select Board or Utility Governing Board is free to establish new priorities, such as offering telecommunications services
- There are more than 40 municipal electric utilities in Massachusetts.
- At least four are currently offering telecommunications services.
- Chester is the only electric municipal utility provider in the current WiredWest region.

Q14 What if any of the 47 WiredWest towns wanted to leave the public cooperative after it forms? Could they do so?

- A town will be allowed to leave the project up to the point of financing. Once financing is secured the town would likely need to commit and remain involved in the project for the length of the term of the financing.
- Note that most municipal bond terms are 20-30 years.

Q15 When will the Public Cooperative be formed?

- From a legal standpoint, the Cooperative can be formed with just 2 MLP towns. However, from a practical standpoint, two towns are really insufficient to allow for strong continuity of governance. So, if not 2 towns, how many?
- This question is being addressed by the bylaws sub-committee and will be resolved at the October 30 delegates meeting.
- Here are two essential considerations that will go into that decision.
 1. Consideration #1: Continuity of Governance
 - I. Once the Public Cooperative comes into existence, the current governing structure (ie steering committee/town delegates form will

be dissolved and replaced by the Public Cooperative's Board of Directors and the Executive Committee it establishes.

- II. A key consideration is continuity of governance and the ability to move the project forward without interruption caused by the transitioning to a new leadership structure and management team.
 - III. Guideline: plan for the current Steering Committee to continue to manage WiredWest until such time as a sufficient number of early adopter towns have formed MLP's to form a reasonably sized board of directors.
 - IV. At the latest, this is projected to be June 2011 - the end of the 2011 Annual Town Meeting season.
2. Consideration #2: Critical Mass for First Round Financing.
- I. A key goal for WiredWest will be achieving funding for a 1st round network build out as soon as a sufficient number of towns have formed MLP's.
 - II. The number of towns scheduling Special Town Meetings for vote on the Warrant Article will determine the universe of the "early adopter" towns. This 1st round group has the potential to be ready for financing in June 2011.
 - III. A yes vote at the Special Town meetings of early adopter towns tells us the maximum number of towns that *might* be ready for financing in summer 2011. This means that in January-March 2011 the maximum size of the 1st round MLP towns will be known.
 - IV. Assuming the number of towns that make up the early adapters is sufficient to seek financing, based on critical mass summer 2011 would be the time to form the Public Cooperative

- Based on the criteria outlined above, an educated guess as to when the Public Cooperative would be formed is Summer 2011.

Q16 How will the Town Meetings and Warrant Article Votes Impact Financing and Build Out of the Network?

- Town votes must take place in a time window of no less than 2 months or more than 13 months apart. For each town, the clock starts with the first Town Meeting vote.
- It is expected that towns will not all conduct the two required Town Meeting Warrant Article votes at the same time. It is anticipated that there will

be “early adopter” towns (towns that are highly motivated and can be expected to move as quickly as possible), as well as towns that want to observe the process in other towns and take a slower approach.

- This will have the effect of clustering the towns into at least several groups that will have completed their required two votes over a spread of many months.
 - The first group - the “early adopters” - will hold their first vote at a Special Town Meeting in the winter of 2010/2011, and the second vote at their Annual Town Meeting in the spring of 2011. This group will, in theory, have formed their MLP’s by early summer 2011. They will create the Public Cooperative and our first efforts to obtain financing may occur soon afterwards. Financing may be difficult and time consuming, but if successful then build-out would begin thereafter. Thus, if the Cooperative is created, financing successful, and other technical do not interfere, then it might be possible to begin network build-out construction by as early as fall 2011 in the very best scenario.
 - The second group will have their first vote at their 2011 Annual Town Meeting, and hold a Special Town Meeting in the fall of 2011.
 - The third group - the “wait and see” towns - are harder to predict. They might want to witness the outcome of the 2011 Annual Meeting at other towns and if all looks good to them, decide to set a Special Town Meeting for their 1st vote in the fall of 2011. However they decide, they will probably not be ready for financing until summer or fall of 2012.

CHALLENGES FROM OUTSIDE INTERESTS

Q17 Might there be legal challenges from other energy service providers against the WiredWest Cooperative because of a Municipal Lighting Plant (MLP) structure?

This is not likely. As stated in the warrant article, the intention of the MLPs is to provide a telecommunication system, not to be a power company, and

we do not believe that we are a threat to existing power companies in western Massachusetts. Indeed, as discussed in Q7, WiredWest could offer Smart Grid technology in partnership with existing power companies to our mutual benefit.

Nevertheless, the Steering Committee intends to contact the local electric companies to ensure clear communication and to explore partnering opportunities.

Q18 What about legal challenges from the telecom incumbents to WiredWest building a fiber network for the purpose of providing internet and other services?

We view this as unlikely for two reasons:

- First, the Massachusetts law clearly authorizes lighting plants to offer telecom services, and some Massachusetts towns (e.g. Holyoke) have been doing so for several years without a legal challenge. In effect, some Massachusetts towns have already established a precedent for doing this.
- Second, WiredWest intends to operate an *open access network* with business and residential services offered by private sector service providers. The Public Cooperative will be a network operator only; it will not be selling services at retail. Should they choose to, the telecom incumbents could offer services over the WiredWest network.

THE ROLE OF BYLAWS

Q19 What role will bylaws play in the decision making process of the Municipal Public Cooperative.

- Bylaws are essentially the rules under which the Public Cooperative will be governed. Some will be very important to the towns. (e.g. representation on Cooperative Board of Directors, rules for joining the Cooperative). Other bylaws are essential to the Cooperative and how it conducts business internally and externally, but will have little or no impact on the towns.

- WiredWest is currently developing the language for the key bylaws that will impact the towns in preparation for the first round of Town Meeting. WiredWest is being guided in this by counsel.
- Explaining these key bylaws to the Select Boards and citizens will be a critical aspect of upcoming town informational meetings.

Q20 How will we be able to actually get this project going and completed with the inherent slowness of working with a 47 member organizational structure?

- The bylaws will be designed recognizing the importance of streamlining operations.
- The WiredWest Board of Directors will set mission, policy, budget and other macro level decisions, including bylaws.
- The Board of Directors will meet either monthly or quarterly.
- The Board of Directors will create an Executive Committee that will meet more frequently and delegate certain duties and responsibilities to that committee. The Executive Committee will likely be 5-7 people.
- Once operational, the Board of Directors and the Executive Committee will hire a full time Manager to direct daily operation of the network.

Q21 How can we include all 47 towns in a timely way? Do we have to wait until all towns have joined to begin work on the project? Or can work begin with only some towns, and other towns wait and join later?

- Working with 47 towns will be a challenge. However, the economics of the project do not require that all towns join at the same time.
- This is not a bad thing. Under the best of circumstances, even if ample and immediate financing were available, if all 47 towns were ready to go at the same time, it would still take several years to completely build out the network.
- Build-out of the network can begin, theoretically, as soon as there are a sufficient number of towns who have formed MLP's to achieve a critical mass suitable to obtain financing.
- Given the MBI's timetable for buildout, it is important to form the Public Cooperative as soon as this critical mass has been reached.
- This suggests that the Public Cooperative will be formed by far fewer than all 47 towns.

- With properly written bylaws and a well developed plan for financing, this will not adversely affect towns joining the Public Cooperative later.

Q22 How important are bylaws to determine the requirements for town to join the Public Cooperative after it is formed?

- The procedure under which towns can join the Cooperative must be developed with great care and clearly understood by the towns. A key aspect of the bylaws will be the rules under which towns can be added to the network after it has been formed. Towns should know this prior to Warrant Article votes.
- WiredWest's Bylaws Subcommittee is addressing these specific issues. A slate of bylaws will be presented for review at a Bylaws Workshop to be held on October 16. Final vote on the bylaws by the town delegates will take place on October 30.

Q23 Is the size and composition of the membership of WiredWest intended to be frozen at the original 47 towns, or will new towns be allowed, or encouraged, to join?

- The Steering Committee has not formally addressed this question, but the consensus seems to be that managed growth is, at the right time, something to be encouraged. It will be of benefit to the network for the powerful reason that more households on the network will attract more service providers and economies of scale with all that that implies.
- The key difficult question about towns joining will focus on formulating a policy relating to large towns like Pittsfield and Greenfield. Central is the question of representation on the Public Cooperatives Board of Directors and Executive Committee.
- Formulating policy on this question will fall to the Cooperative's Board of Directors and Executive Committee, however, the writing of the bylaws pertaining to the rules for joining the Cooperative will have a large impact and needs to be addressed with thought to the small town/large town/city questions about representation.

Q24 Is it possible to craft town-specific warrant articles that would allow an MLP to provide other services such as wind or hydroelectric power? Would it be desirable to do so?

- Towns are free to place articles on their warrants as they deem appropriate. However, WiredWest will not provide support to create town-specific article language or any other support for activities that an MLP might engage in outside of our primary purpose of building a community-owned fiber optic broadband network.
- WiredWest prefers that the warrant article remains essentially the same across all towns and that other unrelated services not be included. Expanding the scope of a town's MLP at this time could embroil the town in debate that could undermine our goal for universal broadband.

Q25 What are some of the more critical questions that will be addressed in the bylaws?

- Town representation on the WiredWest Board of Directors. Probably the single most important issue for towns will be what is the formula for representation? Is it: one town-one vote; representation as a percentage of population; some other formula that factors in the importance of small towns, but also takes larger town populations into accounts. See Q22.
- The criteria for adding towns to the network as mentioned above is of key importance.
- WiredWest's bylaws sub-committee is currently addressing these questions. There will be a Bylaws workshop on Saturday, October 16.
- Town delegates will vote on the bylaws on Saturday, October 30.

Q26 What happens if we build out the WiredWest network and then either Verizon or Comcast comes in and creates a new network? In other words, can someone else overbuild our network?

- Yes. This would be completely legal. However, once the WiredWest network is build, it is extremely unlikely.
- There have been no incidents of a fiber-to-the-premises network being overbuilt anywhere in the USA.
- An additional reason is that incumbent service providers will be invited to use the Public Cooperative's network. WiredWest wants them to use it. The more service providers on the network the better the choices and cost will be for end users.
- The time of greatest risk of competition for WiredWest will be the period *before* our network is completed. During that time period, other providers

could decided to provide services to selected customers who are clustered close together, thus making it more difficult for WiredWest to attract subscribers in those populated areas.

Q27 Is it possible for a Municipal Lighting Plant Town to provide telecommunications service to other towns that are not MLP's? What about an MLP Public Cooperative?

- Yes. An MLP town can provide telecommunications services to a town that is not an MLP town. This is already being done. Holyoke Gas & Electric, an MPL, is providing telecommunications services to Chicopee and downtown Springfield.
- In addition to an MLP providing service to non-MLP towns, our research indicates that a Public MLP Cooperative can do the same.
- Any town that participated as a "non-member" of the Public Cooperative to receive telecommunications services would have limited rights and would not have voting privileges in the Cooperative's decision making process.
- WiredWest is studying these options. This would provide a way to grow the network more quickly without new towns that want to join having to go through the MLP town warrant article process.
- The WiredWest bylaws committee will be making a recommendation on this point on October 30.

Q28 If a town with an existing Municipal Lighting Plant joins the Public Cooperative, would it lose its autonomy over its own MLP?

- No. The Lighting Plant already has the authority to provide telecommunications services (§ 47E). If it is providing electric services, and not telecommunications services, it might have to register or otherwise notify the Commonwealth. This will need further research.
- Chester is the only town in the WiredWest region that would be so affected.

Q29 If some of the 47 towns have a franchise agreement with a cable TV provider, what impact will that have on the Public Lighting Cooperative? Are there other considerations for towns with franchise agreements?

- In the current WiredWest area there are 7 towns that currently have Cable Franchise Agreements.
- If WiredWest builds out fiber in a town with an existing cable franchise agreement, it is possible that the cable company would have to be re-released from the terms of that agreement if TV services are offered over the WiredWest network.
- WiredWest intends to invite all incumbent cable TV providers to use the WiredWest network to offer improved and expanded services (e.g. more HD channels, wider variety of packages), so some incumbent providers may see using the WiredWest network as a business opportunity to reach more customers at lower cost.

FINANCIAL ISSUES

Q30 Does the Municipal Public Lighting Plant Cooperative legal structure provide for robust funding opportunities?

- Yes. the Public Cooperative is thought to be one of the best structures because it allows bonding and access to pools of earmarked public funds.
- The Coop will also be able to work with state legislators to obtain state financial support, and will be able to apply for Federal grants and Federal loan programs. USDA's Rural Utilities Service (RUS) has a long history of providing low cost loans and grants to coops, and this is just one of several funding opportunities afforded by the public coop structure.
- In early December, WiredWest will be issuing a complete report on the proposed business model and the resulting financing options.

Q31 Where will the funding come from to build our network?

- We do not expect the towns to fund this from taxes. Instead, we currently believe it will be possible to use revenue from the network to pay for the cost of construction over a period of fifteen to twenty years.
- Our consultant has recommended that Wired West plan to develop and pursue a "basket" of funding sources. These funding sources could include revenue bonds (guaranteed from revenue generated from users of the network), state financial support, Federal loans and grants, and private sector loans.

- The Wired West network also brings with it the opportunity to partner with the electric utilities on energy conservation. AMR (Automated Meter Reading) and AML (Advanced Metering Infrastructure) could become widely available in western Massachusetts towns with Wired West fiber, and the combination of automated meter reading and modest use of demand-side energy conservation (e.g. opt-in use of turning off water heaters and air conditioning during short periods of peak demand) have the potential to reduce home and business energy costs by 10% to 20%.
- Incorporating energy conservation services on the Wired West network also opens up additional funding sources, including financial partnerships with the electric utilities, grants and loans from the U.S. Department of Energy, and additional sources of state funding.
- WiredWest is currently developing a draft ten-year financial model that will project revenue, income, and funding costs. This will be refined as we move forward. A draft will be completed in early December

Q32 How will financing be structured? All 47 towns at once? Or smaller groupings of towns over a period of time?

- WiredWest can't possibly build out in 47 towns simultaneously.
- All towns do not need to come online at the same time for the project to be financially viable.
- Financing will be staggered to support the build-out of the network in a phased manner with groups of towns coming online together.
- Financing will need to take into account available funding sources, the number of towns that have voted to join the coop, engineering considerations and projected take rates in each town that voted to join.
- These issues and other variables will be covered in the December financial report.

Q33 In order for the network to be sustainable financially, what basic business model will be used ? When will the business model be complete?

- WiredWest is proceeding with an open access model where the Cooperative will build and operate the network and invite private sector providers to offer services on a retail level - internet, phone, television, value added services.

- Revenue would flow to the Public Cooperative from recurring user fees and fees from service providers.
- This model is being used successfully on other projects in the United States, and has been very successful in Europe.
- This topic will be fully covered in the December financial report.

Q34 When will we know the *take rate* required for a town to be included in a round of funding? When in the process will a town need to make the commitment for service?

- The *take rate* is the percentage of households and business in a specified area - like a town - that commit to service.
- The take rate is a key metric for determining the sustainability of a fiber network economics. Below a certain level, the cost of operating the network will exceed the revenue from services.
- Potential funders - banks, the bond market, etc - look closely at take rates when evaluating projects.
- The industry uses 30% as a rule of thumb for a minimum take rate. However, given that service commitments from customers can be for triple play (internet-tv-phone), double play (internet-phone) or a single service and rates for business customers and residential customers have different margins, for our region, we cannot assume 30% is the take rate we will need to achieve. We will have an operational take rate number when the business model/financials presentation is completed in November.
- The operational aspects required for a town to be scheduled for network buildout will be better understood as part of the November financial presentation.

Q35 When will build out of the network begin?

- Assuming a sufficient number of early adopter towns achieve a yes vote at their Special Town Meeting in winter 2011-2012 for a financing critical mass to be reached, much tangible planning will be done in anticipation of successes at the Annual Meeting in the spring of 2011,
- This strategy would prepare for incorporating the Public Cooperative in June 2011 and an aggressive push for funding and 1st round buildout in fall 2011.

Q36 Who will be liable if the WiredWest cooperative fails? Is there a liability limit in the Public Lighting Plant Cooperative statute?

- The answer to who is liable depends on the composition of the financing. If the project were to default, the towns will be at risk only to the extent of their dollar outlay. As it is not contemplated that they commit for the capital cost, their losses would be minor.
- Assuming the issuance of bond funding, the primary impact in the event of a default will be on the Public Cooperative.
- As the Public Cooperative's network will be a very valuable asset, it is probable that a new owner would come in, reorganize and offer services.
- There is no limitation of liability based on the governance structure.

GENERAL QUESTIONS

Q37 Does WiredWest see its mission as being here to serve the towns? Or are we here to serve citizens?

- WiredWest is here to serve both the towns and individual citizens. Our organizational structure is based on municipal involvement because we want long term community control over this asset. Citizen control.
- We want citizens to have a level and quality of service that improves their lives.
- The WiredWest network will be built with public funding because we want to avail ourselves of favorable financing terms only available to towns. Thus, we are here to serve the towns as well.
- We also want to ensure access to public rights of way, which may be easier as a municipal entity.

Q37 How can we avoid getting bogged down from micromanagement?

- Our region has little experience with regional entities so it is understandable to expect that scrutiny will be high in the initial period.
- As with any significant new service, many towns will want to participate deeply and be involved in a level of detail that may be excessive.
- It is likely that the first 12-18 months of the organization's formal creation will be complicated by a level of micromanagement.

- If the Board and Executive Committee keep communities informed and steward the first months well, as trust builds towns will tend to cede more responsibility and authority to the organization and/or limit the hyper involvement.

Q38 How will we decide which towns will get service first? And, in what town order will the build out of the network continue?

- This is a complex question with many variables. Towns that vote to join first will very likely get service first. However, even this cannot be guaranteed at this point.
- Depending on timing, one determinant will be the geographical order of the MBI's build out.
- To hold down costs, maximizing engineering efficiency for the build out of our network will be a key consideration.
- Business modeling shows that the take rate - the percentage of households/businesses in a town who want service - is a key to sustainability. This needs to be factored in.
- WiredWest has been advised by every expert not to bow to political pressure in decisions regarding the plan for building out the network.
- The buildout should be accomplished by strictly following a sound engineering plan that maximizes efficiency and holds down costs.

Q39 How many Municipal Lighting Plants are there in the Commonwealth? When were they formed?

- There are 41 MLP's in Massachusetts operating under M.G.L. c. 164 and its various sections.
- In 1996, Concord voted at two Town Meetings to form an MLP. However, since then, the town has been unable to negotiate a reasonable sale price with the Investor Owned Utility to purchase the assets.
- Before 1996, the most recent operational MLP was formed in 1927 when the Town of Chester acquired the Chester Light Company.

Q40 Are any authorized Municipal Lighting Plant towns providing telecommunications services?

- Yes. At least five towns are providing, or in the process of providing, telecommunications services. They are: Holyoke, Chicopee, Westfield, South Hadley and Concord.
- Holyoke is providing telecommunications services to Chicopee and downtown Springfield businesses as well as to municipal services and electrical sub-stations. Planning is underway to extend telecommunications services to residents.
- Westfield is providing some telecommunications services.
- South Hadley is in the planning stage.
- Concord was recently bonded \$4.5 million to build out a fiber network to provide Smart-Energy to residences and businesses. Next year they hope to bond an additional \$2 million for telecommunications services to residences and businesses.

Q41 Have Municipal Lighting Plant towns formed Public Cooperatives?

- Yes, Holyoke, Chicopee, Westfield and South Hadley have formed WMPUC - Western Massachusetts Public Utilities Cooperative.
<http://www.wmpuc.org/organization.cfm>.
- The cooperative is currently being used to purchase power for the four towns. It is not being used to provide telecommunications services.
- The towns are reviewing whether or not combining the existing telecommunications services each town has already built out is advantageous.

End